

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EMANUEL D. FAIR,

Plaintiff,

V.

KING COUNTY; CITY OF REDMOND; BRIAN COATS; RON J. HARDING; LENWORTH G. KNOWLES; GREG MAINS; GREG L. PATRICK; LON SHULTZ<sup>1</sup>; DAVID SOWERS; ANN MARIE FEIN; SHAWN McCRILLIS; KRISTI WILSON<sup>2</sup>; TERRY MORGAN; JAN FULLER; JEFF BAIRD; TODD CLARK; JOHN DIAZ; and JOHN DOES 1-20

## Defendants.

C21-1706 JHC  
ORDER

## INTRODUCTION

This matter comes before the Court on two motions to dismiss (Dkt. ## 43 & 67), each brought by a different group of defendants. The City of Redmond and individual members of the Redmond Police Department (collectively, the “Redmond Defendants”) move for dismissal

<sup>1</sup> This defendant's last name is spelled as "Shultz" in the caption of the operative pleading, as well as in his attorney's notice of appearance (Dkt. # 42), but as "Schultz" in the body of the Amended Complaint (Dkt. # 27), as well as in a pending motion to dismiss (Dkt. # 43). Given the lack of clarity, the Court uses the same spelling as in the caption of the operative pleading.

<sup>2</sup> The operative pleading identifies this defendant as “Kristi Wilson” in the caption, but as “Kristi Miller” in the factual allegations. *See* Am. Compl. at ¶ 27 (Dkt. # 27). For purposes of the pending motions, the Court treats Kristi Wilson and Kristi Miller as the same person.

1 under Federal Rule of Civil Procedure 12(c). *See* Redmond's Mot. (Dkt. # 43).<sup>3</sup> King County,  
 2 supervisors in King County's Department of Adult and Juvenile Detention ("DAJD"), and King  
 3 County Senior Deputy Prosecuting Attorney ("DPA") Jeff Baird (collectively, the "King County  
 4 Defendants") also move for dismissal, but they cite both Rule 12(b)(6) and Rule 12(c). *See* King  
 5 Cnty.'s Mot. (Dkt. # 67). No party requested oral argument, and the Court does not believe that  
 6 oral argument would be beneficial. Having reviewed all papers filed in support of,<sup>4</sup> and in  
 7 opposition to, the motions, the Court enters the following Order.

## II

### BACKGROUND

9 Plaintiff Emanuel D. Fair alleges that he was maliciously or negligently prosecuted for a  
 10 murder that he says he did not commit, and as to which he was acquitted by a jury in June 2019  
 11 after spending nine years in pretrial detention at the King County Correctional Facility,  
 12 colloquially known as King County Jail. He sues the Redmond Defendants and DPA Baird for  
 13 malicious prosecution under federal (42 U.S.C. § 1983) and state (common) law, as well as for  
 14 negligence, negligent infliction of emotional distress, and intentional infliction of emotional  
 15 distress (outrage). He brings a § 1983 claim and state law negligence and intentional tort claims

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17 <sup>3</sup> Ann Marie Fein, Lenworth Knowles, Greg Mains, and Kristi Wilson are not among the  
 18 individuals listed as moving parties in the Redmond Defendants' motion. Fein, Mains, and Wilson,  
 19 however, later joined in the motion. *See* Notice (Dkt. # 55). Knowles separately joined. *See* Notice (Dkt.  
 20 # 77).

21 <sup>4</sup> The parties disagree concerning which materials the Court should consider in deciding the  
 22 pending motions. The Redmond Defendants cite materials outside the pleadings submitted as appendices  
 23 to a motion filed and then withdrawn by King County. *See* Redmond's Mot. at 2–3 (citing Apps. A–H  
 (Dkt. # 16-1)). The King County Defendants have offered these same documents (and others) in support  
 of their pending motion to dismiss. *See* Apps. A–L (Dkt. ## 67-1 – 67-12). Plaintiff agrees that the Court  
 may consider Appendix A, which contains certain charging documents, *see* Pl.'s Resp. at 5 (Dkt. # 59),  
 but he objects to the other materials. Each of the documents, however, is a form of court record (*i.e.*,  
 motions, orders, transcripts, and so on.), and the crux of Plaintiff's opposition is not whether the Court  
 may take judicial notice, which, of course, it may, *see* Fed. R. Evid. 201, but how the materials should be  
 construed for purposes of res judicata and collateral estoppel.

1 against King County and DAJD personnel for alleged maltreatment during his time at King  
 2 County Jail. Plaintiff's claims relate to the following events.

3 **A. The Crime, the Suspects, and the Investigation**

4 In the early morning hours of November 1, 2008, Arpana Jinaga was murdered. Am.  
 5 Compl. at ¶ 33 (Dkt. # 27). Her body was discovered in her apartment in Redmond on  
 6 November 3, 2008, by a family friend, accompanied by one of Jinaga's neighbors, Cameron  
 7 Johnson. *Id.* at ¶¶ 33 & 52; *see* Certification for Determination of Probable Cause ("PC  
 8 Certification") at 2 (App. A). Jinaga had helped host a Halloween party the evening before her  
 9 death, which was attended by 40 to 50 people, including Plaintiff Emanuel Fair. Am. Compl. at  
 10 ¶¶ 37 & 42. During the party, the front door to Jinaga's apartment was left open, and guests had  
 11 full access to her living space. *Id.* at ¶ 39. Plaintiff was inside the unit at various times during  
 12 the party; he used Jinaga's bathroom and entered her bedroom while she was present with other  
 13 guests. *Id.* at ¶ 40. Plaintiff had not, however, previously known Jinaga or been at the apartment  
 complex. *Id.* at ¶¶ 38 & 41.

14 According to Plaintiff, after listening to music in Johnson's apartment, he went to Leslie  
 15 Potts's apartment sometime between 2:30 and 3:00 a.m. and slept in her bed until about 10:00  
 16 a.m., at which time he began helping clean up debris from the party, depositing some of it in the  
 17 complex's dumpster. *Id.* at ¶¶ 45 & 48–49. The operative pleading seems to suggest that, during  
 18 murder-investigation interviews, Potts corroborated Plaintiff's account. *Id.* at ¶ 46 & 49. The  
 19 PC Certification, however, states that Potts told detectives she went to bed before Plaintiff, left  
 20 the door unlocked for him, and did not know what time he came in. *See* PC Certification at 7. In  
 21 the morning, she found an empty condom package on the kitchen table, which had not been there  
 22 the previous evening, and assumed Plaintiff had had intercourse during the interim. *Id.*

1 Another resident of the apartment complex, Jeffrey Perras, did not attend the party but  
2 returned home around 3:00 a.m. and observed a man wearing an orange fleece jacket, about  
3 5'11" to 6'3" in height, with an olive complexion and light stubble, standing in Jinaga's  
4 doorway, talking to someone inside the unit. Am. Compl. at ¶¶ 47 & 59. This description  
5 allegedly matches Johnson (Jinaga's neighbor) more than Plaintiff, who is a short, Black man,  
6 and was not wearing an orange jacket. *Id.* at ¶¶ 3, 34, 47 & 77. Jinaga was apparently alive and  
7 on her computer at 3:29 a.m.; her time of death was estimated to be between 3:30 and 8:00 a.m.  
8 on November 1, 2008. *Id.* at ¶¶ 60–61.

9 The medical examiner opined that Jinaga died from asphyxiation caused by strangulation.  
10 *Id.* at ¶ 62; *see* PC Certification at 2. When discovered, her naked body was covered in motor  
11 oil, and her fingers and fingernails had been cleaned and then covered with toilet bowl cleaner.  
12 Am. Compl. at ¶¶ 55–56. Burn marks in the vicinity suggested a failed attempt to set a fire to  
13 cover up the murder. *Id.* Jinaga's oil-soaked, bloodstained, and torn underpants were found on  
14 the kitchen counter, and a roll of black tape, with a length extended, was discovered on a sofa in  
15 the living room. *See* PC Certification at 4. Saliva containing Jinaga's DNA was collected from  
16 the underpants, and long, dark hairs, which were likely Jinaga's, as well as fragments of elastic  
17 from the torn underpants, were on a length of the black tape, suggesting that the underpants and  
18 tape were used to gag Jinaga. *Id.* at 4 & 8. In the apartment complex's dumpster, investigators  
19 found Jinaga's bed sheets and a bag containing a bottle of motor oil, a boot lace believed to be  
20 the ligature used to strangle Jinaga, and a red terry-cloth bathrobe. Am. Compl. at ¶ 69; *see* PC  
21 Certification at 4–5.

22 The PC Certification stated that Plaintiff's DNA was discovered (i) mixed with Jinaga's  
23 bloodstains on the bathrobe, (ii) on the length of black tape recovered from Jinaga's sofa, and  
(iii) on a swab taken from Jinaga's neck during her autopsy. *See* PC Certification at 8. The PC

1 Certification further indicated that Plaintiff made or received 20 calls between 1:54 a.m. and 4:48  
2 a.m. on November 1, 2008, seven of which were with a number associated with an ad for sexual  
3 services, and three of which were with Potts, during the period when Plaintiff indicated he was in  
4 bed with her. *Id.* at 6–7.

5 According to the operative pleading, neighbor Johnson's DNA was found on the motor  
6 oil bottle and in a section of wet carpet near Jinaga's body. Am. Compl. at ¶¶ 84 & 86. On  
7 November 1, 2008, Johnson apparently attempted to cross the Canadian border without a  
8 passport. *Id.* at ¶ 74. He also hurt himself, while at a post-Halloween party, in “a way that  
9 seemed fake and odd” in an apparent effort to create an explanation for his injuries, which were  
10 consistent with those that would have been sustained during a sexual assault of Jinaga. *Id.* at  
11 ¶ 75. In addition, on November 1, 2008, Johnson visited a pawn shop, which was suspicious  
12 because Jinaga's phone and digital camera were missing from her apartment and never  
13 recovered. *Id.* at ¶ 76.

14 Along with Johnson, the Amended Complaint lists a number of possible suspects,  
15 including Aaron Gurtler, one of Jinaga's former sexual partners, whose DNA was found at the  
16 crime scene, *id.* at ¶ 92, and Josiah Lovett, another apartment complex resident, whose DNA was  
17 found on the boot lace and the bathrobe found in the bag with the motor oil, *id.* at ¶ 96. In the  
18 operative pleading, Redmond police personnel are accused of failing to investigate these other  
19 persons of interest “with any tenacity,” *id.* at ¶ 100, and they are alleged to have focused on  
20 Plaintiff because he was “the only African American at the party” and an “outsider,” *id.* at ¶ 101.  
21 Plaintiff's 2004 statutory rape conviction was also a likely factor, *see id.* at ¶ 102, but the  
22 Amended Complaint also alludes to Redmond's retention of a “psychic medium” named Allison  
23 DuBois, which allegedly coincided with Plaintiff being deemed the “prime suspect,” *id.* at  
¶¶ 104–05.

1     B.     **The Detention, the Prosecution & the Prior Litigation**

2           On October 29, 2010, almost two years after Jinaga was killed, Plaintiff was charged with  
 3     murder and booked into King County Jail. *Id.* at ¶ 125; *see* Information (App. A). Plaintiff's  
 4     first trial started on February 14, 2017, and ended on April 19, 2017, with a hung jury. Am.  
 5     Compl. at ¶¶ 126–27; *see* Order Declaring Deadlock (App. E). After a second trial in 2019,  
 6     Plaintiff was acquitted. Am. Compl. at ¶¶ 128–29; *see* Verdict (App. H).

7           During eight of the nine years of his pretrial detention at King County Jail, Plaintiff was  
 8     housed in the Protective Custody Unit (“PCU”); the operative pleading alleges that this decision  
 9     was based on assumptions about Plaintiff's non-existent gang affiliations. Am. Compl. at  
 10    ¶¶ 131–32. Plaintiff alleges that, while in PCU, he would often be on “lockdown” in a solitary  
 11    confinement cell, without access to a shower or exercise, for weeks at a time. *Id.* at ¶ 133.  
 12    Plaintiff further alleges that he asked for medical and psychiatric services but did not receive any  
 13    treatment for conditions that he says he developed while in custody: severe sleep apnea,  
 14    depression, anxiety, and posttraumatic stress disorder. *Id.* at ¶¶ 135–36. Plaintiff also accuses  
 15    unnamed King County Jail staff of sexually harassing and humiliating him. *Id.* at ¶ 137.

16           In February 2016, about a year before his first trial began, Plaintiff filed a pro se civil  
 17    rights complaint under 42 U.S.C. § 1983. *See Fair v. King Cnty.*, Case No. C16-273 JLR (W.D.  
 18    Wash.). Based on a stipulation of the parties, the matter was dismissed with prejudice. *See*  
 19    Apps. J–L. King County and DAJD Major Todd Clark were parties to the previous lawsuit, but  
 20    DAJD Director John Diaz was not.<sup>5</sup> *See* App. I. The parties disagree about the extent to which  
 21    Plaintiff is barred by the dismissal of his earlier claims from bringing his current action.

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 23           <sup>5</sup> According to the King County Defendants, Diaz succeeded Claudia Balducci as DAJD Director  
 24    in mid-April 2019, shortly before Plaintiff was acquitted and released from pretrial detention. *See King*  
 25    *Cnty.*'s Mot. at 4 n.2. Balducci was a defendant in the prior litigation, along with 42 other individuals  
 26    and King County. *See* App. I. For purposes of analyzing the res judicata effect of the earlier action,

III

## DISCUSSION

#### **A. Applicable Standard**

Although the Redmond Defendants and the King County Defendants refer to Rule 12(c), they do not ask for judgment on the pleadings, and so the Court construes their motions as seeking dismissal under Rule 12(b)(6). In ruling on a Rule 12(b)(6) motion to dismiss, the Court must assume the truth of the plaintiff's allegations and draw all reasonable inferences in the plaintiff's favor. *Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). A complaint challenged by a Rule 12(b)(6) motion need not provide detailed factual allegations, but it must offer "more than labels and conclusions" and contain more than a "formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The complaint must show more than mere speculation of a right to relief. *Id.* A complaint may be lacking for one of two reasons: (i) absence of a cognizable legal theory, or (ii) insufficient facts under a cognizable legal claim. *Robertson v. Dean Witter Reynolds, Inc.*, 749 F.2d 530, 534 (9th Cir. 1984). The question for the Court is whether the facts in the complaint sufficiently state a "plausible" ground for relief. *Twombly*, 550 U.S. at 570. If the Court dismisses the complaint or portions of it, it must consider whether to grant leave to amend. *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000).

## **B. Individual Defendants**

With a couple exceptions—Redmond Detective Brian Coats and DPA Baird—the operative pleading does not allege with particularity what each individual defendant did or failed to do in connection with Plaintiff's prosecution and/or pretrial detention. Ron J. Harding is

Plaintiff does not appear to dispute that the relevant subset of parties in the current case are identical to or in privity with the parties in the previous matter. *See* Pl.'s Resp. at 18 (Dkt. # 69).

1 alleged only to have retrieved Jinaga's bedsheets. Am. Compl. at ¶ 70. Terry Morgan  
2 supposedly initiated contact with Allison DuBois, the psychic medium. *Id.* at ¶ 104. Jan Fuller  
3 was "tasked with recovering information from Johnson's scrubbed phone," but "was  
4 unsuccessful." *Id.* at ¶ 90. Greg Mains was originally assigned as the lead detective, but then  
5 replaced by Detective Coats. *See id.* at ¶¶ 65–66. Plaintiff fails to explain how these activities  
6 were negligent, outrageous, malicious, or motivated by racial animus. As for Lenworth  
7 Knowles, Greg Patrick, Lon Shultz, David Sowers, Ann Marie Fein, Shawn McCrillis, and Kristi  
8 Wilson/Miller, the operative pleading alleges only that they were assigned to the murder  
9 investigation and "therefore responsible for implementing proper policies, procedure, and other  
10 decisions as delegated to [them]" by the Redmond Police Department. *Id.* at ¶¶ 20 & 22–27.

11 As to DAJD Director Diaz and Major Clark, the Amended Complaint indicates that they  
12 "supervised, administrated, and managed all King County employees and corrections facilities at  
13 the time of [Plaintiff's] injuries, and [were] responsible for ensuring the presence and  
14 implementation of proper policies, procedures, and training." *Id.* at ¶¶ 15–16. Although Diaz  
15 and Clark are sued only in their personal capacities, no allegation is made concerning how they  
16 themselves were deliberately indifferent to Plaintiff's medical, mental health, or other needs.  
17 Nor has Plaintiff pleaded any facts to support a plausible claim that Diaz or Clark acted  
18 negligently or outrageousness in connection with Plaintiff's pretrial detention. The Court  
19 therefore GRANTS both the Redmond Defendants' motion and the King County Defendants'  
20 motion with respect to all individual defendants except Detective Coats and DPA Baird, and  
21 DISMISSES Plaintiff's claims against Harding, Knowles, Mains, Patrick, Shultz, Sowers, Fein,  
22  
23

1 McCrillis, Wilson/Miller, Morgan, Fuller, Clark, and Diaz<sup>6</sup> without prejudice and with leave to  
 2 amend.

3 **1. Prosecutorial Immunity**

4 DPA Baird invokes prosecutorial immunity as an absolute bar to all of Plaintiff's claims  
 5 against him. The existence of absolute prosecutorial immunity is evaluated based on "the nature  
 6 of the function performed, not the identity of the actor who performed it." *Kalina v. Fletcher*,  
 7 522 U.S. 118, 127 (1997) (quoting *Forrester v. White*, 484 U.S. 219, 229 (1988)). DPA Baird  
 8 bears the burden of showing that he is entitled to such immunity because he was "acting in a  
 9 prosecutorial role." *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 912 (9th Cir. 2012); *see also id.*  
 10 ("absolute immunity is an extreme remedy, and it is justified only where 'any lesser degree of  
 11 immunity could impair the judicial process itself'" (quoting *Kalina*, 522 U.S. at 127)). DPA  
 12 Baird cannot meet his burden because Plaintiff does not challenge actions that he took in his role  
 13 as an advocate for the State of Washington.

14 Nothing in the operative pleading suggests that DPA Baird is being sued for making a  
 15 charging decision, seeking a high amount of bail (\$5 million), or otherwise performing the  
 16 "traditional functions" of a prosecuting attorney. *See Kalina*, 522 U.S. at 125 & 129 (with regard  
 17 to both common law and statutory claims, absolute immunity applies when prosecutors are  
 18 "performing traditional functions," including "the preparation and filing" of "charging  
 19 documents" like an "information" and a "motion for an arrest warrant"). Rather, the Amended

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20 <sup>6</sup> In light of its ruling, the Court need not address whether DAJD personnel are entitled to  
 21 absolute quasi-judicial immunity. The Court notes, however, that Plaintiff's claims against Director Diaz,  
 22 Major Clark, and Does 11–20 relate to the conditions of confinement, not the duration or fact of  
 23 confinement, *see Am. Compl. at ¶¶ 165–76*, and thus, Plaintiff does not make the type of claim that would  
 be barred by quasi-judicial immunity. *See Engebretson v. Mahoney*, 724 F.3d 1034, 1039–40 (9th Cir.  
 2013). As for quasi-judicial immunity, the King County Defendants' motion is DENIED, but without  
 prejudice to renewing the argument if Plaintiff amends his pleading to allege claims against DAJD  
 personnel as to which such immunity might apply.

1 Complaint alleges that DPA Baird engaged in investigative or administrative activities during the  
2 murder investigation, including providing advice to police officers, questioning residents of the  
3 apartment complex, processing the crime scene, and making himself “an integral part of the  
4 investigative team.” Am. Compl. at ¶¶ 30, 64, 68 & 163; *see also Burns v. Reed*, 500 U.S. 478,  
5 492–96 (1991) (absolute immunity does *not* extend “to the prosecutorial function of giving legal  
6 advice to the police”). To the extent DPA Baird asserts that the Amended Complaint does not  
7 provide with sufficient particularity the details of his investigative or administrative conduct,  
8 such argument does not warrant dismissal with prejudice on absolute immunity grounds; at most,  
9 it would support a dismissal with leave to amend. The motion to dismiss based on prosecutorial  
immunity is DENIED.

10 **2. Qualified Immunity**

11 Qualified immunity has been asserted on behalf of DPA Baird and Detective Coats with  
12 respect to Plaintiff’s § 1983 claim for malicious prosecution. Qualified immunity is “an  
13 immunity from suit rather than a mere defense to liability.” *Mitchell v. Forsyth*, 472 U.S. 511,  
14 526 (1985) (emphasis in original). As for a claim brought under 42 U.S.C. § 1983, an individual  
15 defendant is entitled to qualified immunity if either of the following criteria is satisfied: (i) the  
16 alleged facts do not show a constitutional violation; or (ii) the constitutional right allegedly  
17 violated was not “clearly established” at the time of the events at issue. *Saucier v. Katz*, 533  
18 U.S. 194, 201 (2001), *overruled in part on other grounds by Pearson v. Callahan*, 555 U.S. 223  
(2009).

19 **a. Constitutional Violation**

20 In arguing that Plaintiff has not pleaded a constitutional violation, Defendants cavalierly  
21 summarize Plaintiff’s allegations as merely nit-picking how the murder investigation was  
22 performed. Such grievances would not, of course, support a § 1983 claim, but Plaintiff pleads  
23

1 far more than has been credited by Defendants. To prevail on a § 1983 claim for malicious  
 2 prosecution, Plaintiff must show that a defendant “prosecuted [him] with malice and without  
 3 probable cause, and that they did so for the purpose of denying [him] equal protection or another  
 4 specific constitutional right.” *See Awabdy v. City of Adelanto*, 368 F.3d 1062, 1066 (9th Cir.  
 5 2004) (alterations in original, quoting *Freeman v. City of Santa Ana*, 68 F.3d 1180, 1189 (9th  
 6 Cir. 1995)). *Awabdy* reiterates the principle that no substantive due process right exists under the  
 7 Fourteenth Amendment to be free from prosecution without probable cause. *Id.* at 1069. Thus,  
 8 to succeed on a malicious prosecution claim under § 1983, a plaintiff must prove that “the  
 9 defendants acted for the purpose of depriving him of a ‘specific constitutional right,’” albeit not  
 10 necessarily one protected by the Fourth Amendment. *Id.* In *Awabdy*, the Ninth Circuit  
 11 concluded that the Plaintiff had stated a § 1983 malicious prosecution claim by alleging that the  
 12 defendants conspired to deprive him of his First Amendment free speech rights by unlawfully  
 13 interfering with his campaign for reelection to the City Council of Adelanto, as well as his right  
 14 to equal protection under the Fourteenth Amendment by intentionally causing the prosecutor to  
 15 bring an unfounded embezzlement charge against him because of racial animus against Arab  
 16 Americans. *Id.* at 1065 & 1069–70.

17 *Awabdy* supports the conclusion that the facts set forth in the Amended Complaint state a  
 18 plausible § 1983 malicious prosecution claim. Plaintiff alleges that DPA Baird and Detective  
 19 Coats caused him to be prosecuted without probable cause based on racial animus, thereby  
 20 depriving him of his Fourteenth Amendment right to equal protection.<sup>7</sup> According to the

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21 <sup>7</sup> Contrary to DPA Baird’s contention, Plaintiff does not raise a “negligent” investigation claim  
 22 under § 1983. In addition, although the authorities cited by DPA Baird support the proposition that  
 23 negligence is not actionable under § 1983, they are factually and procedurally distinguishable, and do not  
 support dismissal with prejudice. In both *Goodwyn v. Kincheloe*, No. 85-7046, 1986 WL 17850 (4th Cir.  
 Oct. 14, 1986), and *Carter v. Bone*, No. C/A No. 309-779, 2010 WL 558598 (D.S.C. Feb. 10, 2010), the  
 claim at issue was premised on negligence (rather than willfulness or reckless indifference, as pleaded in  
 this matter, *see* Am. Compl. at ¶ 143), and the motion at issue was for summary judgment. In *Williams v.*

1 Amended Complaint, when interviewing witnesses, detectives asked about or focused on race  
 2 only when discussing Plaintiff, and they treated more generously than Plaintiff various White  
 3 suspects like Johnson,<sup>8</sup> Gurtler, and Lovett. *Id.* at ¶¶ 156(a)–(h). Detective Coats, who signed  
 4 the PC Certification, is accused of saying that Plaintiff was the target of the investigation because  
 5 he was “the only African American at the party” and an “outsider.” *Id.* at ¶ 101 & 110.  
 6 Detective Coats, who “had never worked, much less led, a case of this complexity before,” is  
 7 alleged to have developed his hypothesis about the motive for Jinaga’s murder: that Plaintiff  
 8 wanted sex from her, after consulting a “psychic medium.” *Id.* at ¶¶ 66 & 111. When asked  
 9 about the significance of Plaintiff’s prior conviction for statutory rape, Detective Coats  
 10 supposedly indicated, “If you’ve done it before, you’ll do it again.” *Id.* at ¶ 158.

11 Plaintiff further criticizes Detective Coats for omitting the following potentially  
 12 exculpatory information from the PC Certification: (i) Lovett’s DNA was found on the boot lace  
 13 believed to be the ligature used to strangle Jinaga, (ii) Johnson’s DNA was found on the motor  
 14 oil bottle found in the dumpster and a wet area of carpet near Jinaga’s motor-oil-covered body,  
 15 (iii) the DNA of unidentified males was found on a tampon discovered near Jinaga’s body, as  
 16 well as on the roll of tape associated with gagging Jinaga, and (iv) the presence of Plaintiff’s  
 17 DNA might be innocently explained by his attendance at the party preceding her death and his

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18 *City of Albany*, 936 F.2d 1256 (11th Cir. 1991), the Eleventh Circuit did not clearly describe the  
 19 procedural posture, but the negligent investigation claim appears to have been dismissed on a motion for  
 20 summary judgment involving qualified immunity. *Id.* at 1258 & 1260–61. Finally, in *Bryant v. City of*  
*21 Goodyear*, No. CV-12-319, 2013 WL 1897129 (D. Ariz. May 6, 2013), although the § 1983 negligent  
 22 investigation claim and four other federal claims were dismissed, the Plaintiffs were given leave to  
 23 amend. *Id.* at \*13-15.

24 <sup>8</sup> Plaintiff contrasts how investigators questioned him (in an “unmarked car” without advising  
 25 him of his constitutional rights) with how they interviewed Johnson, who was accompanied in the  
 26 interrogation room by his father and attorney, was offered immunity during certain sessions, and was  
 27 allowed at times to provide crucial information while the camera was turned off. *See* Am. Compl. at  
 28 ¶¶ 156(c) & (g).

1 assistance with party clean-up efforts the following morning. *Id.* at ¶¶ 118–24. Finally, Plaintiff  
 2 reproaches Detective Coats for misrepresenting,<sup>9</sup> in the PC Certification, the DNA evidence  
 3 linking Plaintiff to the crime, which the operative pleading characterizes as being “in such trace  
 4 amounts that the samples had to be sent to specialized labs for analysis” and “not an exact  
 5 match” or “*not a match at all*,” but indicating merely that Plaintiff’s DNA could not be excluded  
 6 as a match. *Id.* at ¶¶ 116–17 (emphasis in original). Neither DPA Baird nor Detective Coats  
 7 argue that, assuming the truth of these allegations, Plaintiff could not establish a constitutional  
 8 violation for purposes of the first prong of the *Saucier* test.

9 Rather, DPA Baird and Detective Coats contend that Plaintiff cannot establish the  
 10 requisite lack of probable cause because he is precluded by collateral estoppel from challenging  
 11 these rulings of the King County Superior Court: (i) Judge Palmer Robinson’s order granting  
 12 DPA Baird’s motion for a finding of probable cause and fixing bail (App’x B); (ii) Judge  
 13 Mariane Spearman’s oral ruling denying a motion to dismiss that was brought during the first  
 14 criminal trial (App’x D); and (iii) Judge Douglass North’s oral ruling denying a “halftime”  
 15 motion in the second criminal trial (App’x F). In making this argument, Defendants do not cite

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16         <sup>9</sup> DPA Baird argues that Plaintiff’s allegations must meet the heightened pleading standard for  
 17 fraud. *See* Fed. R. Civ. P. 9(b). Neither of the cases cited by DPA Baird are factually analogous. *See*  
 18 *Swartz v. KPMG LLP*, 476 F.3d 756 (9th Cir. 2007) (reversing the district court’s denial of leave to  
 19 amend a fraud claim relating to a failed tax shelter scheme, which the defendants allegedly sold to the  
 20 Plaintiff even though they knew it would be considered unlawful by the Internal Revenue Service);  
 21 *Aquilina v. Certain Underwriters at Lloyd’s Syndicate #2003*, 407 F. Supp. 3d 1051 (D. Haw. 2019)  
 22 (dismissing, with leave to amend, putative class action claims brought under Hawaii’s deceptive trade  
 23 practices acts that arose out of an allegedly deceptive scheme of “steering” homeowners into purchasing  
 worthless “surplus lines” insurance policies). At least one district court has rejected the notion that, when  
 a malicious prosecution claim alleges false reporting, it must comply with Rule 9(b). *See Holland v. City  
 of San Francisco*, No. 19-cv-2545, 2020 WL 1322925, at \*2 (N.D. Cal. Mar. 21, 2020). To the extent,  
 however, that Rule 9(b) applies, Plaintiff has pleaded with the requisite particularity how the PC  
 Certification was allegedly misleading and who participated in crafting it: Detective Coats, allegedly with  
 the advice of DPA Baird. Unlike with Detective Coats, Plaintiff has not attributed to DPA Baird any  
 expression of racial animus, but Plaintiff need not prove a race-based motive to prevail on his common  
 law claims. As for his § 1983 claim, Plaintiff may plead malice, intent, and “other conditions of a  
 person’s mind” in a general and conclusory fashion. *See* Fed. R. Civ. P. 9(b).

1 or acknowledge *Awabdy*,<sup>10</sup> which contradicts their position. In *Awabdy*, the Ninth Circuit  
 2 observed that a prima facie finding of probable cause may be rebutted by a showing that the  
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4 <sup>10</sup> Instead, they rely on Washington law, asserting that state law on collateral estoppel applies  
 5 when deciding, in a federal action involving a § 1983 claim, the preclusive effect of a prior state court  
 6 ruling. None of the cases they cite, however, relied on a preliminary finding of probable cause (rather  
 7 than a conviction, final judgment, or decision on appeal) to bar a § 1983 malicious prosecution claim  
 8 involving an equal protection violation. *See Haring v. Prosise*, 462 U.S. 306 (1983); *Ayers v. City of*  
*9 Richmond*, 895 F.2d 1267 (9th Cir. 1990); *Davis v. Clark Cnty.*, 966 F. Supp. 2d 1106 (W.D. Wash.  
 10 2013); *see also Haupt v. Dillard*, 17 F.3d 285 (9th Cir. 1994); *Thompson v. Copeland*, No. C14-1769,  
 11 2015 WL 6738861 (W.D. Wash. July 24, 2015); *Fontana v. City of Auburn*, No. C13-245, 2014 WL  
 12 4162528 (W.D. Wash. Aug. 21, 2014). Even if Washington law applies, the showing necessary for  
 13 collateral estoppel has not been made. *See Hanson v. City of Snohomish*, 121 Wn.2d 552, 562, 852 P.2d  
 14 295 (1993) (indicating that collateral estoppel requires identical parties or privity, identical issues, a  
 15 previous final judgment on the merits, and a finding that application of the doctrine would not work an  
 16 injustice). First, the issues are not identical. In ruling on “halftime” motions, Judges Spearman and North  
 17 were assumed the truth of the State’s allegations and drew all reasonable inferences in the State’s favor.  
 18 *See App’x D* (Dkt. # 67-4 at 18); *App’x F* (Dkt. # 67-6 at 7). In contrast, in deciding the pending motions  
 19 to dismiss, the Court must assume the truth of plaintiff’s allegations and draw all reasonable inferences in  
 20 his favor. *Usher*, 828 F.2d at 561. Plaintiff pleads that the State’s allegations were false or misleading,  
 21 and thus, the Court cannot treat as collaterally binding decisions that presumed the State’s allegations  
 22 were true. *See Morley v. Walker*, 175 F.3d 756, 761 (9th Cir. 1999) (observing that “deliberately or  
 23 recklessly” misstating or omitting facts material to probable cause is “not objectively reasonable,” and  
 that courts are “not equipped at [the Rule 12(b)(6)] stage” to resolve disputes about whether  
 misrepresentations were made). Judges Spearman and North made their rulings almost seven and nine  
 years, respectively, after Plaintiff was charged with Jinaga’s murder, based on a different quantum of  
 evidence than when the prosecution began. *See id.* (recognizing that the timing of a state court’s probable  
 cause determination is an important factor in deciding whether to give it preclusive effect (citing *Haupt*,  
 17 F.3d at 289)). Judge Robinson’s finding of probable cause was closer to the relevant time, but it was  
 based entirely on the PC Certification, which Plaintiff criticizes as exaggerating the quality of the DNA  
 evidence linking him to the crime and failing to disclose exculpatory information that might have caused  
 Judge Robinson to form a different opinion. Second, the previous probable cause rulings were not  
 “final.” *See Cunningham v. State*, 61 Wn. App. 562, 567, 811 P.2d 225 (1991) (adopting the following  
 test for finality: (i) whether the prior decision was adequately deliberated; (ii) whether it was firm, rather  
 than tentative; (iii) whether the parties were fully heard; (iv) whether the court supported its decision with  
 a reasoned opinion; and (v) whether the decision was subject to appeal or in fact was reviewed on appeal  
 (citing Restatement (Second) of Judgments § 13 cmt. g (Am. L. Inst. 1982))). None of the rulings at issue  
 were set forth in a written, reasoned opinion, and the denial of a “halftime” motion may not be appealed,  
*see Wash. Sup. Ct. Cr. R. 8.3(c)(3)*. Both Judges Spearman and North were essentially “outvoted” as to  
 what a “rational juror” could find “beyond a reasonable doubt” from the evidence adduced at trial; the  
 first jury was deadlocked 11-to-1 to acquit, and the second jury found Plaintiff not guilty. *See App’x D*  
 (Dkt. # 67-4 at 19); *App’x F* (Dkt. # 67-6 at 7); *App’x H* (Dkt. # 67-8); *Am. Compl.* at ¶¶ 127 & 129  
 (Dkt. # 27). Finally, application of the collateral estoppel doctrine would work an injustice. The  
 Redmond Defendants’ view that Plaintiff has twice had an opportunity to challenge probable cause and  
 twice failed is myopic, and their assertion that Plaintiff would suffer no injustice is unsupported by the  
 authorities they cite. Indeed, *Rickert v. City of Poulsbo*, No. C07-5477, 2008 WL 271643 (W.D. Wash.  
 Jan. 29, 2008), contradicts their position. *See id.* at \*6–8 (concluding that the plaintiff was “not  
 collaterally barred from raising the issue of probable cause,” reasoning that, although the plaintiff’s  
 motion to suppress had been denied, the charges against him were still dismissed, and the “prior criminal

1 criminal prosecution was “induced by fraud, corruption, perjury, fabricated evidence, or other  
2 wrongful conduct undertaken in bad faith.” 368 F.3d at 1067. The *Awabdy* Court further held  
3 that, to the extent a judge’s preliminary probable cause ruling was premised on fabricated  
4 evidence or other wrongful conduct by state or local officials, the doctrine of collateral estoppel  
5 does not bar a § 1983 Plaintiff from relitigating probable cause. *Id.* at 1068. In light of *Awabdy*,  
6 the Court must conclude that Plaintiff is not collaterally estopped by the decisions of Judges  
Robinson, Spearman, or North from asserting that he was prosecuted without probable cause.

**b. “Clearly Established” Right**

A constitutional right is “clearly established” if existing controlling precedent, *i.e.*, a decision of the Supreme Court or the Ninth Circuit, has “placed the . . . constitutional question beyond debate.” *See Russell v. Lumitap*, 31 F.4th 729, (9th Cir. 2022) (quoting *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018)). Qualified immunity ensures that, before individuals face suit under § 1983, they had notice (or “fair warning”) of the unlawfulness of their conduct, and thus, a constitutional right is considered “clearly established” only if the contours of the right are “sufficiently clear that a reasonable official would understand that what he is doing violates that right.” *Hope v. Pelzer*, 536 U.S. 730, 739–40 (2002) (quoting *Anderson v. Creighton*, 483 U.S. 635, 640 (1987)). This “fair warning” does not require that the “very action” at issue be previously deemed unlawful, but that the unlawfulness be “apparent” given the preexisting law. *Id.* at 739 (quoting *Anderson*, 483 U.S. at 640); *see Sandoval v. County of San Diego*, 985 F.3d 657, 680 (9th Cir. 2021) (“State ‘[o]fficials can still be on notice that their conduct violates

adjudication did *not* end in a *final* judgment on the merits” (emphasis added)). Another way to summarize events is that Plaintiff was twice tried and essentially twice acquitted, which substantially undermines the persuasive effect of the state court’s probable cause rulings. This analysis also applies to Plaintiff’s common law claim of malicious prosecution, as to which Washington law governs. *See United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966) (observing that a federal court exercising supplemental jurisdiction over state-law claims must apply state law to them, citing *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938)).

1 established law even in novel factual circumstances’—i.e., even without a prior case that had  
 2 ‘fundamentally similar’ or ‘materially similar’ facts.” (alteration in original, quoting *Wilk v.*  
 3 *Neven*, 956 F.3d 1143, 1148 (9th Cir. 2020))).

4 *Awabdy* was decided in 2004, before Jinaga’s murder and before the prosecution at issue  
 5 began, and in *Awabdy*, the Ninth Circuit applied the guidance of a Supreme Court decision  
 6 issued in 1994. *See* 368 F.3d at 1068–69 (citing *Albright v. Oliver*, 510 U.S. 266 (1994)).  
 7 *Awabdy*, which Defendants failed to mention in their briefs even though it is cited in the  
 8 operative pleading, *see* Am. Compl. at ¶ 161, is the type of controlling precedent envisioned in  
 9 *Saucier* and its progeny, and it provided the requisite notice to DPA Baird and Detective Coats,  
 10 more than four years before they engaged in the claimed actions at issue, that their alleged  
 11 conduct constituted a constitutional violation. Both pending motions are DENIED with respect  
 12 to qualified immunity, but without prejudice to raising the issue again in a motion for summary  
 13 judgment or at trial in a manner consistent with this Order.

13 **C. Governmental Defendants**

14 **1. King County**

15 King County accuses Plaintiff of bringing another lawsuit against the same defendants for  
 16 the same incarceration and argues that Plaintiff is barred by the dismissal of his earlier lawsuit  
 17 from pursuing the claims pleaded against it (and its personnel) in this action. This contention  
 18 lacks merit. Res judicata refers to the preclusive effect of former litigation. *Robi v. Five*  
 19 *Platters, Inc.*, 838 F.2d 318, 321 (9th Cir. 1988). Res judicata has two conceptual categories:  
 20 (i) claim preclusion; and (ii) issue preclusion, also called “collateral estoppel.” *Robi*, 838 F.2d at  
 21 321 & n.2; *see also Frank v. United Airlines, Inc.*, 216 F.3d 845, 850 n.4 (9th Cir. 2000)  
 22 (“Rather than using the terms ‘res judicata’ and ‘collateral estoppel,’ the Supreme Court has  
 23 generally used the terms ‘claim preclusion’ and ‘issue preclusion.’”); *Ross v. Alaska*, 189 F.3d

1 1107, 1110 n.2 (9th Cir. 1999). The key distinction between the two types of preclusion is that  
2 matters never litigated may be barred by claim preclusion, while only matters actually litigated  
3 may be barred by issue preclusion. *See Frank*, 216 F.3d at 850 n.4; *Ross*, 189 F.3d at 1110 n.2.

4 King County invokes claim preclusion. Plaintiff's previous lawsuit concerned King  
5 County Jail's use of waist restraints and handcuffs, the combination of which Plaintiff believed  
6 had exposed him to the risk of attack from other inmates, and the tightness of which Plaintiff  
7 asserted had injured his wrists, for which he received allegedly deficient medical care. *See*  
8 App'x I. In the pending action, Plaintiff does not repeat the waist restraint and handcuff  
9 grievances; his current claims relate to solitary confinement, cold cell conditions, failure to treat  
10 his sleep apnea and mental health conditions, and alleged sexual harassment. King County  
11 suggests that Plaintiff should be prevented from pursuing these claims because Plaintiff could  
12 have, but failed to, raise them in the earlier litigation. This contention concerns the preclusive  
13 effect of a decision by a federal court exercising federal-question jurisdiction, and it is therefore  
14 governed by federal common law. *See Media Rts. Techs., Inc. v. Microsoft Corp.*, 922 F.3d  
15 1014, 1021 n.6 (2019).

16 Under federal common law, claim preclusion bars a party from pursuing claims that  
17 "were raised or could have been raised in [a] prior action." *Id.* at 1020. In the Ninth Circuit,  
18 however, claim preclusion "does *not* apply to claims that accrue after the filing of the operative  
19 complaint" in the previous suit. *Id.* at 1021 (emphasis added); *see also id.* at 1022 n.8 (clarifying  
20 that the filing of the operative complaint, not the entry of judgment, is the relevant date for  
21 purposes of claim preclusion). In other words, Plaintiff is not barred from pursuing in this action  
22 "claims that were not in existence and could not have been sued upon—*i.e.*, were not legally  
23 cognizable—when the allegedly preclusive action was initiated." *Id.* at 1021. In addition, as  
recognized by the Ninth Circuit, "[a] substantially single course of activity may continue through

1 the life of a first suit and beyond,” and “[t]he basic claim-preclusion result is clear: a new claim  
 2 or cause of action is created as the conduct continues.” *Id.* at 1022 (quoting 18 Edward H.  
 3 Cooper, FED. PRAC. & PROC. JURIS. § 4409 (3d ed. 2022 update)).

4 Plaintiff remained in pretrial detention for more than two additional years after the  
 5 previous case was dismissed with prejudice. *See Judgment in C16-273-JLR* (Apr. 7, 2017)  
 6 (App’x L); *Verdict* (June 11, 2019) (App’x H). King County has offered no evidence that  
 7 Plaintiff waived or somehow released it or its corrections officials from future claims. Plaintiff  
 8 may proceed on his claims relating to the conditions of confinement continuing, and events  
 9 occurring, after August 1, 2016, when the operative pleading in Case No. C16-273 JLR was  
 10 filed. *See App’x I.* In arguing to the contrary, King County cites no supporting authority.<sup>11</sup> The  
 King County Defendants’ motion is DENIED with respect to res judicata.

11       2.       **City of Redmond**

12       a.       **Monell Liability**

13       The City of Redmond may not be held liable under § 1983 on a respondeat superior  
 14 theory. *See Monell v. Dep’t of Soc. Servs. of N.Y.C.*, 436 U.S. 658, 691 (1978); *Ulrich v. City &*

15 *Cnty. of San Francisco*

16 , 308 F.3d 968, 984 (9th Cir. 2002). Instead, governmental Section 1983  
 liability must turn on one of four theories: (i) a policy or longstanding practice or custom from  
 17 which the alleged constitutional violation resulted; (ii) an unconstitutional action by an official  
 18 with final policy-making authority; (iii) ratification by an official with final policy-making  
 authority of a subordinate’s unconstitutional conduct; or (iv) a failure to adequately train  
 19 employees that amounts to “deliberate indifference” about the constitutional right at issue.

20  
 21  
 22       <sup>11</sup> Indeed, in the most recent decision cited in the King County Defendants’ reply, the Ninth  
 Circuit rejected a res judicata argument. *See Grondal v. United States*, 21 F.4th 1140, 1164 (9th Cir.  
 23 2021).

1 *See, e.g., Menotti v. City of Seattle*, 409 F.3d 1113, 1147 (9th Cir. 2005); *see also City of Canton*  
 2 *v. Harris*, 489 U.S. 378 (1989). The Amended Complaint attempts to plead the first (policy or  
 3 practice), third (ratification), and fourth (failure to train) theories of *Monell* liability.

4 The operative pleading identifies policies or practices that the Redmond Police  
 5 Department (“Redmond PD”) did not have or allegedly did not follow; Redmond PD apparently  
 6 did not require the changing of gloves between sample collections or locations, the securing of  
 7 evidence like the apartment complex’s dumpster or neighbor Johnson’s phone, or any partnering  
 8 with agencies more experienced in homicide investigation.<sup>12</sup> *See* Am. Compl. at ¶¶ 67, 70–71,  
 9 89, 147, 149 & 151. The Amended Complaint further asserts that acts or omissions consistent  
 10 with Redmond PD’s practices were ratified by policymakers. *Id.* at ¶ 160. Plaintiff does not,  
 11 however, explain how the alleged deficiencies in the way Redmond PD handled this or any other  
 12 murder investigation stemmed from racial animus or had a purpose of denying equal protection  
 13 of the law, and he has not sufficiently pleaded the first (policy or practice) or third (ratification)  
 grounds for a *Monell* claim against the City of Redmond.

14 In contrast, in alleging a failure to train, the operative pleading speaks directly about the  
 15 equal protection component of a § 1983 malicious prosecution claim. The Amended Complaint  
 16 states that the City of Redmond and Redmond PD’s supervisory personnel “failed to properly  
 17 train and supervise employees on how to conduct racially unbiased investigations.” *Id.* at ¶ 156.  
 18 It accuses Redmond PD personnel of referencing race only when questioning witnesses about  
 Plaintiff and of treating White suspects more favorably than Plaintiff. *Id.* at ¶¶ 156(a)–(h). It

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21 <sup>12</sup> The City of Redmond denies that it had a policy or practice of not partnering with other law  
 22 enforcement organizations, referencing its Answer for support. Redmond’s Mot. at 8 (citing Answer at  
 23 ¶ 67 (Dkt. # 34) (indicating that Washington State Patrol and Federal Bureau of Investigation personnel  
 assisted with the investigation at issue)). Conflicting facts contained in a responsive pleading cannot,  
 however, form the basis of a Rule 12(b)(6) dismissal. *See Usher*, 828 F.2d at 561.

1 also contends that the “disparate treatment” Plaintiff received resulted from a failure to  
 2 adequately train Redmond PD employees to perform racially unbiased investigations, and that  
 3 such failure amounted to “deliberate indifference” concerning Plaintiff’s constitutional rights.

4 *See id.* at ¶ 157.

5 The City of Redmond argues that Plaintiff has not alleged a pattern of violations that  
 6 would have provided notice of a need for further training. Plaintiff responds that no pattern is  
 7 required because “the unconstitutional consequences of failing to train” were “patently obvious.”  
 8 Pl.’s Resp. at 14 (Dkt. # 59) (quoting *Hyde v. City of Willcox*, 23 F.4th 863, 874–75 (9th Cir.  
 9 2022) (quoting *Connick v. Thompson*, 563 U.S. 51, 64 (2011))). When viewed in the light most  
 10 favorable to Plaintiff, the operative pleading sufficiently pleads a plausible claim that the lack of  
 11 training about how to conduct racially unbiased investigations had “patently obvious”  
 12 unconstitutional consequences. *See Ross v. City of Oakland*, No. 14-cv-800, 2014 WL 4744191,  
 13 at \*4 (N.D. Cal. Sep. 22, 2014) (finding “plausible that the City’s failure to train was so  
 14 obviously deficient that it could be subject to liability under § 1983 as a result of a single  
 15 incident,” namely the erroneous attempted-murder conviction of the Plaintiff, which resulted  
 16 from *inter alia* an officer’s direction to the victim to identify the plaintiff in a photo montage).  
 17 The City of Redmond’s motion to dismiss is GRANTED as to the policy-or-practice and  
 18 ratification claims, and those theories of *Monell* liability are DISMISSED without prejudice and  
 19 with leave to amend; the motion is DENIED with respect to failure to train.

20 **b. Public Duty Doctrine**

21 A plaintiff may not base a claim of negligence on an intentional act but may sue for  
 22 negligent acts leading up to the intentional tort. *See Beltran-Serrano v. City of Tacoma*, 193  
 23 Wn.2d 537, 546, 442 P.3d 608 (2019). For example, in *Beltran-Serrano*, the plaintiff, who was  
 shot multiple times by a police officer, could proceed on a negligence claim against the City of

1 Tacoma for the officer’s alleged failure to use reasonable care during the interaction with the  
 2 plaintiff that preceded the shooting. *Id.* at 544–48. To maintain an action for negligence, a  
 3 plaintiff must first demonstrate that the defendant owed the plaintiff a duty of care. *See, e.g.,*  
 4 *Honcoop v. Wash.*, 111 Wn.2d 182, 188, 759 P.2d 1188 (1988). In the context of claims against  
 5 governmental entities, Washington courts use a “focusing tool” known as the public duty  
 6 doctrine, which recognizes that governments are tasked with certain duties that are not actionable  
 7 in tort, and which ensures that “governments do not bear greater tort liability than private  
 8 actors.” *Beltran-Serrano*, 193 Wn.2d at 549.

9 The public duty doctrine defines four instances in which a governmental entity may be  
 10 found to owe a statutory or common law duty to a particular member of the public: (i) legislative  
 11 intent, (ii) failure to enforce, (iii) the rescue doctrine, or (iv) a special relationship. *See Cummins*  
 12 *v. Lewis Cnty.*, 156 Wn.2d 844, 853 & n.7, 133 P.3d 458 (2006). If one of these four  
 13 “exceptions” does not apply, then no liability may be imposed for a public officer’s negligent  
 14 conduct, based on the reasoning that a duty was not owed specifically to the individual plaintiff,  
 15 rather than the public in general. *Id.* at 852. The Redmond Defendants contend that Plaintiff has  
 16 not pleaded facts to support one of the four “exceptions” to the public duty doctrine, and that, as  
 17 a result, Plaintiff cannot further pursue his negligence claim. Plaintiff argues that the public duty  
 18 doctrine does not apply, but *Beltran-Serrano* seems to contradict his assertion, and the Court will  
 19 analyze the negligence claim through the lens required by the public duty doctrine.

20 The first three “exceptions” do not apply, and the only “exception” on which Plaintiff  
 21 might rely is a “special relationship.” In cases predating *Beltran-Serrano*, Washington courts  
 22 articulated these requirements for establishing a “special relationship” that would create an  
 23 actionable duty on the part of a governmental entity: (i) the plaintiff had direct contact or privity  
 with a public official, thereby setting the plaintiff apart from the public; (ii) the public official

1 gave “express assurances” to the plaintiff; and (iii) the plaintiff justifiably relied on such express  
 2 assurances to his or her detriment. *See Cummins*, 156 Wn.2d at 854. In *Beltran-Serrano*,  
 3 however, the Washington Supreme Court appeared to loosen the standard, and required merely  
 4 that the defendant have an “affirmative interaction” with the plaintiff. 193 Wn.2d at 551. The  
 5 *Beltran-Serrano* court reasoned that “every individual owes a duty of reasonable care to refrain  
 6 from causing foreseeable harm in interactions with others.” *Id.* at 550 (citing Restatement  
 7 (Second) of Torts § 281, cmt. e (Am. L. Inst. 1965)). Such “duty applies in the context of law  
 8 enforcement and encompasses the duty to refrain from directly causing harm to another through  
 9 affirmative acts of misfeasance,” rather than nonfeasance. *See id.* (citing *Robb v. City of Seattle*,  
 10 176 Wn.2d 427, 295 P.3d 212 (2013)). In *Beltran-Serrano*, the negligence claims at issue arose  
 11 out of the officer’s “direct interaction” with the plaintiff, rather than a “breach of a generalized  
 12 public duty” to, for example, “provide police services, enforce the law, and keep the peace.” *Id.*  
 13 at 551–52.

14 In *Mancini v. City of Tacoma*, 196 Wn.2d 864, 479 P.3d 656 (2021), the Washington  
 15 Supreme Court extended tort liability to negligence in the execution of a search warrant. *Id.* at  
 16 880. In *Mancini*, officers executed a search warrant at the wrong apartment, which belonged to  
 17 the plaintiff, and the Supreme Court reasoned that the plaintiff’s negligence claim was not based  
 18 on “the City’s duty [running] solely to the public at large” or on “an abstract duty to the nebulous  
 19 public,” but on a “specific duty enforceable by [the plaintiff] in tort.” *Id.* at 885–86. Relying on  
 20 *Mancini* and *Beltran-Serrano*, the court in *Gill v. Magan*, No. C19-860, 2021 WL 928174  
 21 (W.D. Wash. Mar. 10, 2021), concluded that a plaintiff, who was subjected to an erroneous  
 22

1 forced-entry search of her home and arrested at gunpoint, could sue for negligence in applying  
 2 for the search warrant. *Id.* at \*8–9.<sup>13</sup>

3 *Beltran-Serrano*, *Mancini*, and *Gill* support the conclusion that the public duty doctrine  
 4 does not prevent Plaintiff from pursuing a negligence claim. The Redmond Defendants contend  
 5 they did not have the requisite “affirmative interaction” with Plaintiff, but that assertion runs  
 6 contrary to the allegations of the operative pleading. One or more members of Redmond PD is  
 7 alleged to have interrogated Plaintiff in “an unmarked car” without giving him *Miranda*  
 8 warnings. Am. Compl. at ¶ 156(g). One or more members of Redmond PD somehow obtained  
 9 Plaintiff’s DNA. *See* App’x A. And, one member of Redmond PD, Detective Coats, prepared  
 10 the PC Certification used to seek bail in the amount of \$5 million and keep Plaintiff in custody  
 11 for almost nine years. *Id.* To the extent Plaintiff alleges that the murder investigation was  
 12 performed in a negligent manner (rather than with race-based malice), he has plausibly pleaded  
 13 that a duty was owed specifically to him, as distinct from the public. The Redmond Defendants’  
 14 motion to dismiss Plaintiff’s negligence,<sup>14</sup> intentional infliction of emotional distress (outrage),<sup>15</sup>

15 <sup>13</sup> The Redmond Defendants contend that *Gill* is “an overextension of *Mancini*,” and that  
 16 “no Washington court has endorsed the rule *Gill* ascribes to Washington state law claims.” Redmond’s  
 17 Reply at 11. In affirming other rulings in *Gill*, the Ninth Circuit noted that the plaintiff proceeded to trial  
 18 on a common law negligence claim, but the jury found against her. *Gill v. City of Seattle*, No. 21-35635,  
 2022 WL 4546918, at \*1 n.1 (9th Cir. 2022). The subsequent history of *Gill* reflects the proper  
 functioning of the adversarial process, and the Redmond Defendants’ conclusory criticism of *Gill* does  
 not warrant disregard of the decision.

18 <sup>14</sup> The King County Defendants do not seek dismissal based on the public duty doctrine. A  
 19 related question, which none of the parties have addressed, is which entities are the proper defendants  
 20 with respect to Plaintiff’s negligence claims. To the extent Plaintiff’s theory of liability is negligence  
 21 (rather than willfulness, malice, or intent), the individual Defendants were arguably acting within the  
 22 scope of their employment. Thus, Plaintiff is DIRECTED to show cause why his negligence claim  
 23 should not be dismissed without prejudice as to all individual Defendants, leaving the City of Redmond  
 and King County as the sole defendants, sued for vicarious liability under a respondeat superior theory.

22 <sup>15</sup> The Redmond Defendants assert that, “[a]bsent a direct interaction, the public duty doctrine  
 23 bars individual tort claims (including negligence and outrage claims) based on an alleged duty owed to  
 the public in general.” Redmond’s Reply at 11–12. The two cases they cite, however, predate *Beltran-Serrano*, and neither of them supports the proposition that the public duty doctrine applies to intentional

1 and negligent infliction of emotional distress claims, based on the public duty doctrine, is  
2 DENIED.

3 **IV**

4 **CONCLUSION**

5 For all these reasons, the Court ORDERS:

6 (1) The Redmond Defendants' (Dkt. # 43), is GRANTED in part and DENIED in  
part as follows:

7 (a) All claims against individual defendants Harding, Knowles, Mains,  
8 Patrick, Shultz, Sowers, Fein, McCrillis, Wilson/Miller, Morgan, and Fuller are  
9 DISMISSED without prejudice and with leave to amend;

10 (b) Plaintiff's § 1983 claim for malicious prosecution against the  
11 City of Redmond is DISMISSED with respect to the policy-or-practice and ratification  
theories of *Monell* liability, but without prejudice and with leave to amend; and

12 (c) The motion is otherwise DENIED.

13 (2) The King County Defendants' motion (Dkt. # 67), is GRANTED in part and  
14 DENIED in part as follows:

15 (a) All claims against individual defendants Clark and Diaz are DISMISSED  
16 without prejudice and with leave to amend; and

17 (b) The motion is otherwise DENIED.

18  
19  
20 torts like outrage. *See Osborn v. Mason Cnty.*, 157 Wn.2d 18, 134 P.3d 197 (2006); *see also Fuller v.*  
21 *Lee*, No. C13-563, 2014 WL 6982519, at \*11–12 (W.D. Wash. Dec. 9, 2014). The public duty doctrine is  
22 a means for determining whether an actionable duty exists to establish negligence, and it has no relevance  
with respect to intentional torts. Aside from any applicability of the public duty doctrine, neither the  
23 Redmond Defendants nor the King County Defendants have addressed, and thus the Court need not  
decide, whether Plaintiff has adequately pleaded facts to support his negligence, outrage, or negligent  
infliction of emotional distress claims.

1 (3) Plaintiff must show cause within fourteen (14) days of the date of this Order why  
2 his negligence and negligent infliction of emotional distress claims should not be treated as  
3 asserted solely against the City of Redmond and King County based on the doctrine of  
4 respondeat superior. Any amended pleading must be electronically filed within fourteen (14)  
5 days of the date of this Order. Any responsive pleading or motion must be filed in accordance  
6 with Federal Rule of Civil Procedure 15(a)(3).

7 (4) The stay of discovery imposed by the Order entered January 23, 2023 (Dkt. # 82),  
8 is LIFTED. The trial date and related deadlines set forth in the Minute Order entered August 17,  
9 2022 (Dkt. # 66), remain in effect. Plaintiff shall either identify and join, or voluntarily dismiss,  
Doe defendants by May 15, 2023.

10 (5) The Clerk is directed to send a copy of this Order to all counsel of record.

11 IT IS SO ORDERED.

12 Dated this 13th day of April, 2023.

13   
14 John H. Chun  
United States District Judge